



**202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1) CRM-M-54012-2023
Date of decision: 16.01.2025

Charanjeet Singh Petitioner
Versus

Kulwant Singh ...Respondent

2) CRM-M-10122-2024

Jasbir Kaur @ Sweety Petitioner

Versus
Kulwant Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Bikramjit Singh Baath, Advocate
for the petitioner(s).

Ms. Sushma Sharma, Advocate
for Mr. Ramesh Sharma, Advocate
for the respondent.

HARPREET SINGH BRAR, J. (ORAL)

1. This order shall decide both the above mentioned petitions as they arise from identical factual matrix. However, for the sake of brevity, the facts are taken from CRM-M-54012-2023.

2. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking quashing of complaint bearing No. 169 of 2019 titled '*Kulwant Singh vs. Jasbir Kaur and another*' under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act') as well as summoning order dated 19.09.2022 (Annexure P-5) passed by learned Judicial Magistrate 1st Class, Samrala and all subsequent proceedings arising therefrom.



3. Briefly, the facts, as alleged, are that in the Month of May, 2018, the petitioner approached the respondent for a friendly loan of Rs.7,50,000/- to expand his business. At the time of taking the said loan, the petitioner promised to return the same in the month of April, 2019. The petitioner kept delaying the repayment of the loan but ultimately, issued a cheque bearing no. 047132 dated 12.06.2019 for an amount of Rs.7,50,000/-. However, on presentation for encashment, the same was returned vide memo dated 13.06.2019 with the remarks 'funds insufficient.' Subsequently, a legal notice dated 05.07.2019 was served on the petitioner. However, it was later realised by the counsel for the respondent that the notice was erroneously sent in the name of one Rishi Jain. Accordingly, a corrigendum-cum-rejoinder dated 24.07.2019 was issued to the petitioner and his counsel. Since the petitioner failed to repay the said amount in the stipulated period, the complaint (*supra*) was instituted.

4. Learned counsel for the petitioner *inter alia* contends that the cheque was issued by Jasbir Kaur i.e. the wife of the petitioner (petitioner in CRM-M-10122-2024) under her signature. Moreover, the disputed cheque was one of the seven cheques given by her to one Inderjit Kaur, as security while joining her chit-fund committee. Inderjit Kaur has misused the cheque given to her by Jasbir Kaur by filling the name of Kulwant Singh in it. However, since the petitioner is not the drawer of the cheque, the complaint is not maintainable against him. The petitioner has only been summoned by the learned trial Court because he holds the account, on which the disputed cheque was drawn, jointly with his wife. Further still, the legal notice was issued in the name of Rishi Jain and there is no provision in the NI Act that allows issuance of corrigendum to correct the name of the complainant. Be that as it may, the corrigendum was issued on 24.07.2019, which is beyond the 15 days period



from receiving the memo from the bank. Learned counsel places reliance on the judgment rendered by the Hon'ble Supreme Court in *Alka Khandu Avhad vs. Amar Syamprasad Misra and another* 2021(2) R.C.R.(Crl.) 286, *Mrs. Aparna A. Shah vs. M/s Sheth Developers Private Limited and another* (2013) 4 SCC(Cri) 241, *Suman Sethi vs. Ajay K. Churiwal* 200(1) R.C.R.(Crl.) 780 and *M.s Rahul Builders vs. M/s Arihant Fertilisers & Chemicals and another*.

5. *Per contra* learned counsel for the respondent submits that the learned trial Court has duly applied its judicial mind and considered the material placed before it while summoning the petitioner. Moreover, the disputed cheque relates to the account jointly held by the petitioner and his wife. As such, interference by this Court is not warranted.

6. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the disputed cheque (Annexure P-2) was drawn on the account jointly held by the petitioner and his wife. However, the same was only signed by Jasbir Kaur and not the petitioner.

7. A two Judge Bench of the Hon'ble Supreme Court in *Mrs. Aparna A. Shah (supra)* opined that prosecution can only be initiated against the drawer of the cheque, which requires that the cheque must be signed by them. Speaking through Justice P. Sathasivam, the following was held:

“8. In order to constitute an offence under Section 138 of the N.I. Act, this Court, in *Jugesh Sehgal v. Shamsher Singh Gogi*, 2009(3) RCR (Criminal) 712 : 2009(4) Recent Apex Judgments (R.A.J.) 432 : (2009) 14 SCC 683, noted the following ingredients which are required to be fulfilled :

(i) **a person must have drawn a cheque on an account maintained by him** in a bank for payment of a certain amount of money to another person from out of that account;

xxx

xxx

xxx

Considering the language used in Section 138 and taking note of background agreement pursuant to which a cheque is issued by more than one person, we are of the view that it is only the "drawer" of the



cheque who can be made liable for the penal action under the provisions of the N.I. Act. It is settled law that strict interpretation is required to be given to penal statutes.

xxx

xxx

xxx

22. In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in-chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.

23. **We also hold that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder.** The said principle is an exception to Section 141 of the N.I. Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to dishonour of a cheque can, in no case "except in case of Section 141 of the N.I. Act" be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act." (emphasis added)

8. Furthermore, the legal notice was served upon one Rishi Jain and not the petitioner. Section 138(b) NI Act reads as follows:

Section 138. Dishonour of cheque for insufficiency, etc., of funds in the account.

xxx

xxx

xxx

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

It is trite law that serving a notice is a *sine qua non* for instituting a complaint under Section 138 NI Act. The intention behind the said requirement is to give him an opportunity to settle the debt before criminal proceedings are initiated against him. As such, it becomes all the more important to ensure that



such a notice contains all necessary details pertain to the cause of action, in un mistakeable terms. While Section 138(b) NI Act does not specify the ingredients of a valid notice, this Court cannot overlook the fact that the notice was issued in the name of a different person altogether. The infirmity as such, is not merely formal in nature and impacts the heart of the case. Further still, the memo qua the disputed cheque was issued on 13.06.2019 and legal notice was originally issued on 05.07.2019, however, not to the petitioner(s), as such, the defective notice would vitiates the entire proceedings rendering it suffering from incurable illegality. To correct the same, a corrigendum was issued on 24.07.2019. Even if for the sake of arguments, the corrigendum is considered to be valid, the same was issued after the lapse of the 30-day-period stipulated by the statute.

9. In view of the discussion above, both the above mentioned petition(s) are allowed. Accordingly, the complaint bearing No. 169 of 2019 titled '*Kulwant Singh vs. Jasbir Kaur and another*' under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act') as well as summoning order dated 19.09.2022 (Annexure P-5) passed by learned Judicial Magistrate 1st Class, Samrala and all subsequent proceedings arising therefrom are quashed qua the petitioner(s).

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

16.01.2025
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No